

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------------------|----------|--------------------------------------|
| STANLEY N. OZOROSKI, | : | CIVIL ACTION NO. 1:08-CV-0082 |
| | : | |
| Plaintiff | : | (Judge Conner) |
| | : | |
| v. | : | |
| | : | |
| DR. FREDERICK R. MAUE, et al., | : | |
| | : | |
| Defendants | : | |

ORDER

AND NOW, this 19th day of March, 2009, upon consideration of plaintiff's letter (Doc. 66), which purports to show good cause excusing plaintiff's failure to serve process upon defendants Dr. John S. Reidell ("Reidell") and Dr. David E. Rowe ("Rowe"), and it appearing that plaintiff has been unable to locate Reidell and Rowe, that plaintiff claims "due diligence was performed to try to locate these defendants,"¹ (id.), but that far more than 120 days have passed since the filing of

¹ Plaintiff states that "Dr. Rowe is in Mexico. Plaintiff conducted a diligent search for Dr. Rowe and could not locate him for service." (Doc. 66.) No further elaboration is provided. With respect to Dr. Reidell, plaintiff states that he "left the [Pennsylvania] Department of Corrections by the time Plaintiff's complaint was filed. Dr. Reidell was alleged to be employed in a clinic in Minnesota. Plaintiff attempted to have Dr. Reidell served, but he was no longer at the clinic and there was no information as to his whereabouts." (Id.) Plaintiff does not describe the manner in which service was attempted, the number of attempts made, or the lengths to which he went in order to effectuate service. This failure is especially glaring in light of the order of court (Doc. 63) dated February 18, 2009, wherein plaintiff was ordered to show good cause why Rowe and Reidell should not be dismissed for the failure to effectuate service of process. A full year has passed since plaintiff filed his complaint. (Doc. 1.) The court has given plaintiff ample opportunity to either effectuate service or demonstrate good cause why additional time should be afforded. At this stage of the litigation, plaintiff's vague averments regarding the efforts taken to serve Rowe and Reidell are simply inadequate.

plaintiff's complaint, see FED. R. CIV. P. 4(m) ("If a defendant is not served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time."), and the court concluding that plaintiff's attempt to show good cause is insufficient to merit an enlargement of time to serve process, see MCI Telecomms. Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1097 (3d Cir. 1995) (equating "good cause" with the concept of "excusable neglect"); Cunningham v. New Jersey, 230 F.R.D. 391, 393 (D.N.J. 2005) ("In determining whether there is good cause for the extension of the time for service under Rule 4(m), district courts should consider: (1) reasonableness of plaintiff's efforts to serve (2) prejudice to the defendant by lack of timely service and (3) whether plaintiff moved for an enlargement of time to serve."), that plaintiff has not moved to enlarge the time allotted for service, and that a discretionary extension of time is not warranted, see Boley v. Kaymark, 123 F.3d 756, 758 (3d Cir. 1997) ("If good cause does not exist, the district court must consider whether to grant a discretionary extension of time."), it is hereby ORDERED that pursuant to Rule 4(m), defendants Dr. John S. Reidell and Dr. David E. Rowe are DISMISSED from the above-captioned matter without prejudice.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge